STATE OF ALASKA

IBLA 80-661 Decided December 31, 1981

Appeal from decision of the Fairbanks District Office, Bureau of Land Management, rejecting airport conveyance application F-23276.

Affirmed.

1. Airports--Withdrawals and Reservations: Generally

It is proper to reject an application for conveyance of Government-owned lands for airport development under 49 U.S.C. § 1723 (1976), where the land has been withdrawn for military purposes, is currently used as an Army air field, and where Army officials object to the conveyance.

APPEARANCES: Martha Mills, Esq., Assistant Attorney General, State of Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The Division of Aviation, Department of Transportation and Public Facilities, State of Alaska, appeals from an April 11, 1980, decision of the Fairbanks District Office, Bureau of Land Management (BLM), rejecting its application, F-23276, for conveyance of land for an airport. The application was filed on behalf of Alaska by the Federal Aviation Administration, U.S. Department of Transportation, pursuant to the provisions of the Airport Development Act of 1970 relating to the use of Government-owned lands, 49 U.S.C. § 1723 (1976). The application covers 40 to 45 acres of land that was withdrawn by Public Land Order No. 255 for military purposes. The land is presently the site for Allen Army Airfield, Fort Greely Military Reservation, and the District Office determined that it was necessary to request the concurrence of the controlling agency, the Corps of Engineers (Corps) acting for the Department of the Army. The Corps provided letters stating in detail its objections to a conveyance of land under this Act. The Corps recommended a joint use agreement together with a long term lease or permit instead. In light of these objections, BLM rejected the State's application.

The Airport Development Act, 49 U.S.C. § 1723(b) (1976), provides that upon receipt of a request for conveyance of land, the head of the department or agency having control of the lands shall determine whether the requested conveyance is inconsistent with the needs of the department or agency. The statute appears to equate the agency having control of the land with the agency having authority to execute a conveyance for the land. In its appeal, the State stresses that the withdrawal of the land for military purposes is temporary. The State further asserts that the District Office was incorrect in holding that the concurrence of the Department of the Army was required because the Department of the Interior is the agency which has control over the land.

The Airport Development Act, however, is not the only law that affects this Department's authority to convey the land. The public land order withdrawing the land provided that upon the expiration of the 6-month period following the termination of the unlimited national emergency declared by Presidential Proclamation No. 2487 of May 27, 1941, 1/ jurisdiction over the reserved lands would vest in the Department of the Interior and any other Department or Agency of the Federal Government according to their respective interests then of record. The order further provided that the lands would remain withdrawn from appropriation until otherwise ordered. The Federal Land Policy and Management Act of 1976 provides that where lands are under the administration of any department or agency other than the Department of the Interior, the Secretary may make, modify, and revoke withdrawals only with the consent of the head of the department or agency concerned, except when the emergency withdrawal provisions apply. 43 U.S.C. § 1714(i) (1976). Furthermore, the Secretary may delegate his authority to modify withdrawals only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate. 43 U.S.C. § 1714(a) (1976).

The issue in this case, however, is not whether the Department of the Interior or the Department of Defense is the agency having control over the land within the meaning of 49 U.S.C. § 1723 (1976). Rather, the issue is the extent to which a military airport should be made available for civil use. The Airport Development Act clearly assigns the responsibility for making that determination to the Department of Defense. 49 U.S.C. § 1712(e) (1976).

The State contends that it "is prepared to show that the Corps of Engineers has changed its position through its attorney in meetings with the State and BLM representatives since its 1978 letters and in light of the current joint use agreement." (Statement of Reasons at 5).

1/ 6 FR 2617, 55 Stat. 1647, noted at 50 U.S.C. Appendix, notes preceding section 1 (1976). That national emergency was terminated by Presidential Proclamation No. 2974, effective April 29, 1952, 17 FR 3813, 66 Stat. c31, reprinted in 50 U.S.C. Appendix, notes preceding section 1 (1976).

By order dated July 27, 1981, we directed appellant to submit any evidence which shows that the Corps of Engineers no longer opposes the requested conveyance. In response to our order, appellant has submitted copies of a number of documents which suggest that the Army at one point may not have objected to giving the State some kind of long term interest in the land. It is clear, however, that the Army has always opposed conveyance in fee and continues to do so.

[1] In conclusion, we hold that BLM properly rejected appellant's application for an airport conveyance because the land has been withdrawn for military purposes; the land is currently being used as an Army airfield; and the Army objects to the conveyance as inconsistent with its needs. Cf. City of Tucson, A-24697 (Oct. 31, 1947). (The Department denied renewal of an airport lease issued to the city pursuant to another statute, the Act of May 24, 1928, 49 U.S.C. §§ 211-213 (1976), because the military objected. The applicable statute, 49 U.S.C. § 211(e) (1976), provided that whenever the President deemed it necessary for military purposes, the Secretary of the Army could assume full control of the airport leased under that Act.)

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge